

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 PAUL C. AMENT

Supervising Deputy Attorney General

3 E. A. JONES III, State Bar No. 71375

Deputy Attorney General

4 ELAINE GYURKO

Senior Legal Analyst

5 California Department of Justice

300 So. Spring Street, Suite 1702

6 Los Angeles, California 90013

Telephone: (213) 897-4944

7 Facsimile: (213) 897-9395

8 Attorneys for Complainant

9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Statement of Issues Against:

Case No. 1H 2007 576

13 JOSE ROBERTO CRUZ

9875 Lev Avenue

14 Pacoima, California 91331

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs (Board).

22 2. On or about September 18, 2007, the Board received an application for a
23 Respiratory Care Practitioner License from Jose Roberto Cruz (Respondent). On or about
24 August 20, 2007, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 January 25, 2008.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code)
2 unless otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of
4 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
5 8.3, the Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
7 and revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3732, subdivision (b) of the Code states:

9 "The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

13 7. Section 3750 of the Code states:

14 “The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 “ . . .

18 “(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction.

21 “ . . .

22 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
23 substantially related to the qualifications, functions, or duties of a respiratory care
24 practitioner.

25 “ . . . ”

26 8. Section 3752 of the Code states:

27 “A plea or verdict of guilty or a conviction following a plea of nolo
28 contendere made to a charge of any offense which substantially relates to the

1 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
2 a conviction within the meaning of this article. The board shall order the license
3 suspended or revoked, or may decline to issue a license, when the time for appeal
4 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
5 order granting probation is made suspending the imposition of sentence,
6 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
7 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
8 setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.”

10 9. Section 3752.5 of the Code states:

11 “For purposes of Division 1.5 (commencing with Section 475), and this
12 chapter [the Respiratory Care Practice Act], a crime involving bodily injury or
13 attempted bodily injury shall be considered a crime substantially related to the
14 qualifications, functions, or duties of a respiratory care practitioner.”

15 COST RECOVERY

16 10. Section 3753.5, subdivision (a) of the Code states:

17 "In any order issued in resolution of a disciplinary proceeding before the
18 board, the board or the administrative law judge may direct any practitioner or
19 applicant found to have committed a violation or violations of law to pay to the
20 board a sum not to exceed the costs of the investigation and prosecution of the
21 case."

22 11. Section 3753.7 of the Code states:

23 "For purposes of the Respiratory Care Practice Act, costs of
24 prosecution shall include attorney general or other prosecuting attorney fees, expert
25 witness fees, and other administrative, filing, and service fees."

26 12. Section 3753.1, subdivision (a) of the Code states:

27 "An administrative disciplinary decision imposing terms of probation may
28 include, among other things, a requirement that the licensee-probationer pay the

monetary costs associated with monitoring the probation."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

13. Respondent's application is subject to denial under Code sections 3750, subdivision (d), 3752, and 3752.5, in conjunction with section 3732, subdivision (b), in that he was convicted of a crime substantially related to the qualifications, functions and duties of a respiratory care practitioner. The circumstances are as follows:

A. On or about April 9, 2005, Respondent and his girlfriend, with whom he was living, and who was the mother of their 11 month-old child, were arguing. Respondent screamed at his girlfriend, grabbed her wrist and pulled her into their vehicle. When they arrived at their residence, his girlfriend tried to get out of the vehicle, but Respondent grabbed her arm, and pulled her back into the vehicle. While her foot was still outside of the vehicle on the ground, Respondent drove the vehicle dragging his girlfriend's foot for about five feet. Eventually Respondent stopped the vehicle, leaned over and bit her on her right upper thigh. Respondent drove his girlfriend to the Foothill Station of the Los Angeles Police Department, where she ran into the police station, crying and asking for help.

B. One of the police officers at the Foothill Police Station observed teeth marks on the girlfriend's right upper thigh, scrape marks on her foot, and redness around both wrists. She told the officers that there had been two prior incidents of domestic violence. During the interview, Respondent walked into the Foothill station and was arrested for cohabitation abuse.

C. On or about April 12, 2005, in Los Angeles County Superior Court Complaint No. 5SF01924, Respondent was charged with inflicting corporal injury on a cohabitant, in violation of Penal Code section 273.5(a), a misdemeanor.

D. On or about April 12, 2005, Respondent was convicted upon his plea of nolo contendere to inflicting corporal injury on a cohabitant. Respondent was placed on probation for three years with the following terms and conditions:

1 serve 30 days in county jail (with credit for 6 days) or in lieu thereof, perform 15
2 days of Cal Trans; pay a court security assessment of \$20.00, a domestic violence
3 fund fee of \$400.00, and a restitution fine of \$100.00; and complete a 12-month
4 batterer's counseling program. Respondent was further ordered not to own, use or
5 possess any dangerous or deadly weapons, not to annoy, harass or molest anyone
6 involved in the case, not to threaten anyone or use force or violence against
7 anyone, and to obey all laws.

8 SECOND CAUSE FOR DENIAL OF APPLICATION

9 (Commission of a Fraudulent, Dishonest or Corrupt Act)

10 14. Respondent is subject to disciplinary action under section 3750,
11 subdivision (j), of the Code, in that he committed a fraudulent, dishonest or corrupt act
12 substantially related to the qualifications, functions, or duties of a respiratory care
13 practitioner.

14 A. On or about May 8, 2002, Respondent was arrested on charges of
15 committing robbery. On or about May 10, 2002, in the Superior Court of
16 California, County of Los Angeles, Juvenile Court, a Petition under Section 602 of
17 the Welfare and Institutions Code was filed in Case No. PJ30262. The Petition
18 alleged that Respondent, who was a minor at the time, committed four counts of
19 second degree robbery, in violation of Penal Code section 211, a felony.

20 B. On or about May 31, 2002, Respondent pleaded no contest to
21 Counts 1 and 4 of the Petition, second degree robbery, a felony. The court found
22 the Petition was true as to Counts 1 and 4, and that the Petition was sustained.
23 Respondent was declared a ward of the Court. Respondent was placed in the long
24 term Camp-Community Placement Program for a period not to exceed 6 years and
25 4 months (with credit for 24 days), with various conditions of probation. Counts 2
26 and 3 of the Petition were dismissed. On or about May 7, 2003, the Court
27 terminated jurisdiction.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 1. Denying the application of Jose Roberto Cruz for a Respiratory Care Practitioner License;
- 2. Directing Jose Roberto Cruz to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: May 6, 2008

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant